

CROWN ESTATE SCOTLAND

and

[]

**OPTION AGREEMENT
for
Cable Corridor upon Bed of the Sea for
Wind Farm Project known as []**

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OPTION AGREEMENT

BETWEEN:

CROWN ESTATE SCOTLAND (in Gaelic, Oighreachd a' Chrùin Alba) established as a body corporate in terms of the Crown Estate Scotland Order 2017 (previously carrying on business under the name of "Crown Estate Scotland (Interim Management)", (in Gaelic, Oighreachd a' Chrùin Alba (Stiùireadh Eadar-amail)) and renamed in terms of the Scottish Crown Estate Act 2019), having its principal office at Quatermile Two, 2nd Floor, 2 Lister Square Edinburgh EH3 9GL and acting in exercise of the powers conferred on it by and the Scottish Crown Estate Act 2019 on behalf of Her Majesty The Queen and its successors (**the Landlords**); and

[] (Company No []) a company incorporated under the Companies Acts (Registered Number 07294493) and having their Registered Office at []; (**the Transmission Company** which expression includes any person to whom the benefit of this Agreement is assigned under clause 9).

NOW IT IS HEREBY AGREED as follows:

1 Interpretation

- 1.1 In this Agreement unless the context otherwise requires:
 - 1.1.1 words importing one gender include other genders;
 - 1.1.2 words importing the singular include the plural and vice versa;
 - 1.1.3 words used in this Agreement and not otherwise defined shall have the same meaning as is given to them in the Lease;
 - 1.1.4 references to persons include body corporates and vice versa;
 - 1.1.5 obligations of a party comprising more than one person are obligations of such persons jointly and severally;
 - 1.1.6 any obligation on the Transmission Company not to do or omit to do something shall be construed as including an obligation not to permit or knowingly to suffer it to be done by any other person;
 - 1.1.7 reference to a statute directive or regulation includes any amendment modification extension consolidation or re-enactment of it and references to any statute or directive includes any statutory instrument regulation or order made under it for the time being in force;
 - 1.1.8 references to the Landlords where the context admits includes their assignees;
 - 1.1.9 references to the Transmission Company where the context admits includes its successors in title and assignees;
 - 1.1.10 a consent or approval to be given by the Landlords is not effective for the purposes of this Agreement unless it is in writing and signed by or on behalf of the Landlords;
 - 1.1.11 the clause headings do not affect the construction of this Agreement; and
 - 1.1.12 references to clauses schedule parts and annexures are references to the relevant clause in or part of the schedule or annexure to this Agreement.
- 1.2 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:

AFL Event of Default means an event of material default under the Windfarm Option Agreement;

Authority means an authority whether statutory public local European international or otherwise government department or a court of competent jurisdiction;

Cable Route means the area of [foreshore and] seabed within the Option Site [shown for the purposes of identification coloured [] on the Plan] within which the Cable Corridors(s) will be situated;

Cable Corridor has the meaning given to it in the Lease and the Cable Corridors shall be construed accordingly;

Completion Date means the date for completion of the grant of the Lease as ascertained under clause 6.3;

Conduit means a pipe drain sewer channel gutter cable wire or other conduit for the passage or transmission of water soil gas oil air smoke electricity communications information light or other thing and all ancillary structures and equipment;

CUSC means the Connection and Use of System Code;

Data means primary data observations and metadata gathered and stored by or on behalf of the Transmission Company in relation to meteorological (but for the avoidance of doubt excluding wind resource data), geotechnical, geophysical, bathymetric, oceanographic, sedimentological, environmental, cultural and heritage investigations modelling and monitoring on the Option Site or surrounding areas;

Development shall have the meaning given to it in the Windfarm Option Agreement.

Generator Cables means the Conduits owned by the Windfarm Company (or a member of the Windfarm Company Group) in on or under the Option Site and/or Substation Site for the passage of electricity generated by each of the turbines at the Development to an offshore substation or other point of connection to the Supply Cables;

Group means in relation to the Transmission Company, the Windfarm Company, any Subsidiary or Holding Company from time to time of the Transmission Company and any Subsidiary from time to time of a Holding Company of the Windfarm Company;

Group Company means in relation to the Transmission Company, any member of its Group;

Holding Company means a "holding company" as defined in section 1159 of the Companies Act 2006;

Index means the Consumer Prices Index (CPI) all items (or any identical index published under a different title) published by the Office of National Statistics or any successor body upon which the duties in connection with such an index devolve;

Insolvency Event means with respect to the Transmission Company, that it:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails, or admits in writing its inability, generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or

insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;

- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation of that proceeding or petition;
- (f) has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (i) has a secured party take possession of all or substantially all its assets or has an execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days of that event;
- (j) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (i) above; or
- (k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

Keeper means the Keeper of the Registers of Scotland;

Land Certificate means the certificate issued by the Keeper under Section 5(2) of the Land Registration (Scotland) Act 1979;

Lease means the lease of the Substation Sites and/or Cable Corridors which may be granted by the Landlords to the Transmission Company or an OFTO in respect of the Development which shall be substantially in the form of the draft set out in Part 2 of the Schedule (Lease) subject to any alterations made pursuant to this Agreement;

Necessary Consents means

1. all consents licences permissions orders exemptions and approvals required from any Authority (and shall include for the avoidance of doubt all assessments which may be required to be undertaken before the issue of any of the foregoing); and
2. those matters specified to be Necessary Consents in Schedule Part 2 (*Leases and Licences*)

OFGEM means The Office of Gas and Electricity Markets or such successor body to it;

OFTO means the offshore transmission owner or owners appointed and licensed by the Gas and Electricity Markets Authority (or its successors) to acquire, or (as the case may be) install and own the Supply Cables and ancillary equipment forming part of the offshore electricity transmission system;

Oil and Gas Works means any pipelines platforms wellheads or other works for the exploration for or exploitation of oil and gas in respect of which the consents of the Secretary of State required under a licence issued pursuant to the Petroleum Act 1998 have been given;

Option Notice means written notice served by the Transmission Company on the Landlords on or before the Option Period Date pursuant to clause 3 signed by the Transmission Company requiring the grant of the Lease to take place;

Option Period Date has the meaning given to it in clause 3.3;

Option Site means subject to clause 8.1, the area of the seabed shown for the purposes of identification outlined [] on the Plan, and more particularly described in the attached co-ordinates specified in Schedule Part 4;

Permitted Operations means the carrying out of ground condition surveys and other investigations and assessments and the deployment of instrumentation reasonably required by the Transmission Company in connection with the identification of the Cable Corridor(s) and the obtaining of all Necessary Consents required for the laying of the Supply Cables and associated works;

Plan means the plan attached to this Agreement, forming Schedule Part 3;

[Renewable Energy Zone] has the meaning given to it in the Windfarm Option Agreement;

Rights means the rights set out in Schedule Part 1 of the Lease;

Schedule means the Schedule comprising 4 parts annexed and signed as relative to this Agreement;

Scottish Crown Estate Property means any interest in land to which section 90B(5) of the Scotland Act 1998 applies

Secretary of State means the Secretary of State for the purposes of the Petroleum Act 1998;

Specified Works has the meaning given to it in the Windfarm Option Agreement;

Subsidiary means "subsidiary" as defined in section 1159 of the Companies Act 2006;

Substation Sites has the same meaning as in the Lease;

Supply Cables means cables, wires, other Conduits, offshore platforms and ancillary structures and equipment owned by the Transmission Company on or under the Cable Corridor(s) and the Substation Site for the passage or transmission of electricity generated by the Specified Works or otherwise required for the operation of the Specified Works (but excluding the Generator Cables);

VAT means value added tax and unless otherwise expressly stated all sums payable by the Transmission Company under this Agreement are exclusive of VAT charged or chargeable and the Transmission Company shall pay such VAT in addition to and at the same time as the sum in question;

Windfarm Company means [] or any permitted successor as tenant under the Windfarm Option Agreement

Windfarm Lease Event of Default means an event of material default under the Windfarm Lease;

Windfarm Lease means the lease that may be granted by the Landlords pursuant to the Windfarm Option Agreement;

Windfarm Option Agreement means the option agreement in respect of rights for the Windfarm site upon the bed of the sea known as [] offshore windfarm site upon the bed of the sea at [] dated [] and made between (1) Crown Estate Scotland and (2) [], as amended from time to time;

Working Day means any day except Saturday Sunday and bank or other public holidays in Scotland and England;

2 Permitted Operations

- 2.1 Subject to clause 2.2 the Landlord grants to the Transmission Company a non-exclusive licence to enter the Option Site to carry out Permitted Operations but for no other purpose save with the prior written consent of the Landlord.
- 2.2 The Transmission Company shall not exercise the rights granted under clause 2.1 unless it has first (i) obtained all Necessary Consents for the purpose for which the rights are to be exercised and shall then only exercise the rights in accordance with such Necessary Consents; and (ii) obtained the insurances required in terms of clause 2.10.
- 2.3 The Transmission Company will take necessary action to prevent any nuisance, disturbance, annoyance, inconvenience or damage that occurs as a consequence of it carrying out the Permitted Operations.
- 2.4 The rights granted under Clause 2.1 above are subject to:
 - 2.4.1 public rights of navigation and fishing;
 - 2.4.2 the matters referred to in the Schedule;
 - 2.4.3 the rights of states or their nationals under rules of international law;
 - 2.4.4 other public rights; and
 - 2.4.5 any other interests, rights, easements, quasi easements or overriding interests whatsoever existing now or in the future within the Option Site.
- 2.5 The rights granted under Clause 2.1 in respect of such part or parts of the Option Site as from time to time lie inside the Renewable Energy Zone shall not exceed the rights exercisable by virtue of any Order in Council from time to time made pursuant to section 84(4) of the Energy Act 2004 designating the Renewable Energy Zone.

2.6 Data

2.6.1 The Transmission Company shall provide the Data to the Landlords in reports annually (or such longer intervals as the Landlords may from time to time approve) (in a format which the Landlords reasonably require from time to time, the first report to contain Data gathered since the date of this Agreement and the subsequent reports to contain Data gathered since the previous report.

2.6.2 The Transmission Company acknowledges and agrees that it has no interest or right (including copyright and database rights) in any format or database in which Data is put, stored or processed whether by the Transmission Company pursuant to its obligation under this clause 2.6 or by the Landlords or any third party.

2.6.3 The Transmission Company grants to the Landlords (and shall procure all necessary third party consents to enable it to do so) a perpetual royalty free non-exclusive right and licence to use and make publicly available for any purpose or in any manner or form Data provided to them pursuant to this clause 2.6

2.7 The Transmission Company shall restore the seabed to a safe condition and in accordance with the requirements of the Landlords (acting reasonably), any Necessary Consents and of any Authority as soon as is reasonably practicable following any disturbance of it caused by the carrying out of any Permitted Operations.

2.8 The Transmission Company shall indemnify and keep the Landlords indemnified from and against all actions proceedings claims and demands brought or made and all proper costs and expenses and all losses damage and liabilities incurred suffered or arising directly or indirectly in connection with:

2.8.1 the existence of any equipment installed by the Transmission Company pursuant to this clause 2;

2.8.2 the exercise of the Permitted Operations; and

2.8.3 any breach of the Transmission Company's obligations under this clause 2,

except to the extent that any such actions proceedings claims and demands are brought or made or loss damage costs expenses and liabilities are incurred or suffered as a result of the default or negligence of the Landlords or their servants agents and contractors and/or amount to loss of profit loss of opportunity loss of revenue loss of use loss of contracts and/or any other indirect losses of the Landlords and subject in the case of any loss of the Landlords to the Landlords taking such reasonable steps to mitigate the loss as the Transmission Company may reasonably request.

2.9 Subject to clause 2.8 the Transmission Company's liability to the Landlord in respect of the indemnities set out in clause 2.8 shall not exceed FIVE MILLION POUNDS (£5,000,000) (subject to Indexation on each fifth anniversary of the date of this Agreement) in aggregate.

2.10 Notwithstanding clause 2.9 the Transmission Company's liability to the Landlord in respect of the following shall not be limited in any way:

2.10.1 death or personal injury caused by the Transmission Company's negligence, or that of its directors, officers, employees, advisors, agents, consultants or contractors (including sub-contractors); or

2.10.2 fraud or fraudulent misrepresentation by the Transmission Company or its officers or employees; or

2.10.3 any liability which cannot be excluded or limited by any Laws and Regulations; or

- 2.10.4 any liability which is covered by any insurance required under clause 2.13 (*Insurance*) (or would have been so covered but for any breach of clause 2.13 (*Insurance*)).
- 2.11 The Transmission Company's liability under this Agreement shall cease on the expiry of a period of 5 years after the date of expiry or earlier termination of this Agreement.
- 2.12 The Parties acknowledge that rights under this Agreement are for the development of Supply Cables for the [*insert project name*] windfarm, which is being developed under the Windfarm Option Agreement.
- 2.13 **Insurance**
- 2.13.1 The Transmission Company shall effect and maintain third party and public liability insurance (including pollution cover, property damage, bodily injury and death resulting from sudden or unforeseen physical loss or damage, including any resultant pollution or contamination) in respect of the Option Site and the grant of the rights under Clause 2.1, in the sum of FIVE MILLION POUNDS (£5,000,000), with a reputable insurer (the identity of which has been intimated to the Landlord) in respect of each and every claim (except for pollution and product cover which may be on an annual aggregate basis if unavailable on an each and every claim basis) and naming the Landlord as co-insured. Such insurance shall include without limitation removal of any vessel wreckage.
- 2.13.2 The Transmission Company shall at the request of the Landlord from time to time produce to the Landlord a copy of or full details of the insurance policy required by this clause 2.13 and satisfactory evidence of the payment of the premiums.
- 2.13.3 The Transmission Company shall observe and perform the terms of any insurance policy effected pursuant this clause 2.13 and all requirements from time to time of the insurers.
- 2.13.4 The Transmission Company shall not do or fail to do anything which shall or may cause any such policy to be void or voidable or any monies payable under it to be irrecoverable.
- 2.13.5 The Transmission Company shall not make any material alteration to the terms of any insurance policy which would result in such insurance no longer meeting the requirements of this clause 2.13 without the prior written consent of the Landlord.
- 2.13.6 If the Transmission Company fails to effect and keep in force the insurance it is required to effect and maintain under this clause 2.13 the Landlord may (at their option and without prejudice to any other right or remedy) effect and maintain the insurance and pay the premiums due. The Transmission Company shall pay the amount of the premiums (and any other costs associated with the Landlord effecting the insurance) to the Landlord immediately on demand.
- 2.13.7 From the date of the grant of the Lease, the provisions in the Lease for insurance shall apply]

3 Option

- 3.1 In consideration of the sum of £1 (receipt of which is hereby acknowledged by the Landlords) the Landlords grant to the Transmission Company the option and right to require the Landlords to grant to the Transmission Company or an OFTO [(at the request of the Transmission Company (which request may only be submitted prior to service of an Option Notice) and as approved by the Landlords (such approval not to be unreasonably withheld or delayed))] in respect of the Development a Lease of the Substation Sites and/or a Cable Corridor or on the terms of this Agreement.
- 3.2 The Landlords and the Transmission Company agree that if a valid Option Notice is served in accordance with this clause 3 the Landlords (subject to clauses 7 and 8.1) shall grant the Lease to the Transmission Company or an OFTO on the terms of this Agreement.
- 3.3 The Option Notice shall only be valid if it is received by the Landlords within 6 months of (or such later date as is agreed between the Landlords and the Transmission Company each acting

reasonably and taking into account the relevant regulations and/or OFGEM guidance or policy) the exercise of an option notice under the Windfarm Option Agreement, where the Development referred to in the Windfarm Option Agreement will be using the whole or a substantial part of the Cable Route for connection to the onshore electricity network, (which date shall be the **Option Period Date**).

3.4 At the time the Option Notice is served:

- 3.4.1 satisfactory evidence must be available to the Landlords that the Transmission Company or an OFTO (as relevant) in respect of the Development has all the Necessary Consents in place and the required corporate capacity to accept the grant of the Lease;
 - 3.4.2 the Cable Corridor proposed at that time and the location of any Substation Sites must have been approved by the Landlords pursuant to clause 4; and
 - 3.4.3 sufficient information as is available at the time must have been submitted to the Landlords to enable them to conclude what assets will be owned by and works will be carried out by the Transmission Company and the OFTO in respect of the Development and will be the subject of the Lease.
- 3.5 If the Landlords have not received a valid Option Notice from the Transmission Company by the Option Period Date (time being of the essence) then the provisions of clause 7.2 shall apply.

4 Cable Corridor and Substation Sites

- 4.1 The Cable Corridor shall be part of the Cable Route and shall be proposed by the Transmission Company (and submitted to the Landlords for approval (such approval not to be unreasonably withheld or delayed)) and the Cable Corridor shall not include any part of the seabed which is not comprised within the Cable Route and/or Option Site.
- 4.2 The Transmission Company shall propose locations for the Substation Sites and submit the same to the Landlords for approval (such approval not to be unreasonably withheld) and the Substation Sites shall be located within the Option Site and the parties shall determine whether the Substation Site shall be the subject of the Lease or the Windfarm Lease.
- 4.3 Details of the centre line and width of the Cable Corridor shall be inserted in the definition of Cable Corridor contained in the Lease upon the grant of such Lease.

5 Title

- 5.1 The Transmission Company agrees that the Lease shall be granted to the Transmission Company or the OFTO and that the Lease will be warranted by the Landlords from fact and deed only. The Transmission Company acknowledges that the Landlords have no recorded or registered title to the seabed. The Transmission Company acknowledges that if the Transmission Company or the OFTO applies to register the Lease in the Land Register of Scotland the Keeper may qualify his indemnity statement in the Land Certificate in terms of Section 12(2) of the Land Registration (Scotland) Act 1979 and the Transmission Company or the OFTO shall accept any such qualification in such terms as the Keeper may determine.
- 5.2 The Lease will be granted subject to the matters referred to in clause 2.4 of the Lease and clause 8 and the Schedule Part 1 to this Agreement.
- 5.3 The Transmission Company admits and accepts without requisition or enquiry that the Option Site forms part of Scottish Crown Estate Property and no title guarantee will be given to it.

6 Grant of a Lease

- 6.1 This clause 6 shall take effect upon the service of a valid Option Notice in accordance with clause 3.

- 6.2 The Landlords shall procure that its solicitors prepare the engrossments of the Lease, in duplicate and deliver the engrossed Lease to the Transmission Company or the OFTO(s) in respect of the Development or its solicitors. Within three weeks of receipt the Transmission Company or the OFTO (as applicable) shall execute the Lease (in duplicate) and shall deliver them to the Landlords. Within three weeks thereafter the Landlords shall execute and shall deliver one duplicate of the Lease to the Transmission Company or the OFTO (as applicable).
- 6.3 The Landlords will grant to the Transmission Company or the OFTO in respect of the Development the Lease on the date which is 20 Working Days after the Option Period Date, or earlier by mutual agreement.
- 6.4 The terms of the Lease shall be those as set out in the draft Lease in Schedule Part 2 and completed in accordance with this Option Agreement. Until such time as the Lease is fully executed, the terms of the said draft Lease will have full force and effect as if it were a validly executed Lease except insofar as amended by this Agreement as from the Completion Date and the Landlord and Transmission Company or the OFTO shall each be bound by the whole obligations and conditions contained in the said draft lease notwithstanding that the Lease has not been executed by the parties.
- 6.5 The Commencement Date (as defined in the Lease) shall be the Completion Date and the blank spaces in the Lease shall be completed accordingly together with the requisite annexures.
- 6.6 Schedule Part 3 of the Lease(s) shall contain the matters listed in Schedule Part 1 and such other matters as are added pursuant to clause 8.
- 6.7 The Transmission Company shall produce (or if appropriate, the Transmission Company shall procure that the OFTO provides) a detailed scale plan, suitable for registration in the Land Register of Scotland and satisfactory to the Landlords (showing the proposed Cable Corridor and any proposed Substation Site) to attach to the Lease.
- 6.8 On completion of (and as a pre-condition to) the grant of any Lease where reasonably required by the Landlords the Transmission Company (except where the Transmission Company is an OFTO) shall provide any security bond or other form of guarantee or requisite security instrument or document in a form reasonably required by the Landlords, subject to the provisions of clauses 6.9 and 6.10.
- 6.9 The Landlords shall act reasonably in considering whether any entity is a suitable guarantor for the purposes of clause 6.8 having regard to the Transmission Company's obligations under the Lease and the financial strength of such entity or entities at the time of the grant of the Lease together with any legal opinion.
- 6.10 No security shall be required in relation to the Transmission Company's decommissioning obligations to the extent that such obligations are subject to the decommissioning regime under sections 105 and 105A of the Energy Act 2004 (as amended by the Energy Act 2008 as at the date of this Agreement) (**Decommissioning Regime**) and if such decommissioning obligations cease to be subject to such Decommissioning Regime the Transmission Company shall provide such security bond or other form of guarantee or requisite security instrument or document as would otherwise be required pursuant to clause 6.8 .
- 6.11 For the avoidance of doubt, the Landlords shall never be obliged to grant the Lease to the Transmission Company except where a Group Company has signed a Construction Agreement (as defined in the CUSC) (in accordance with the relevant regulations and/or OFGEM guidance or policy) to install the Supply Cables and ancillary equipment and therefore to constitute the offshore transmission owner for the time being in respect of the Development.

7 Termination

- 7.1 The Landlords may terminate this Agreement by written notice to the Transmission Company in any of the following circumstances (each of which during any period specified shall be an **Event of Default**):

- 7.1.1 where the Transmission Company is not an OFTO and until such time as this Agreement is assigned to an OFTO, there is an AFL Event of Default (or AFL Events of Default) which results in the termination of the Windfarm Option Agreement;
- 7.1.2 until such time as the Lease is assigned to an OFTO, there is a Windfarm Lease Event of Default which results in the termination of the Windfarm Lease.
- 7.1.3 the Transmission Company materially fails to perform or observe any of its obligations in this Agreement and such failure or event is incapable of remedy or it is capable of remedy and the Landlords have served on the Transmission Company written notice specifying the failure or event and requiring it to be remedied within a reasonable time (to be specified in the notice and taking into account the nature of the obligation in question) and the Transmission Company has failed so to do;
- 7.1.4 the Transmission Company fails to serve a valid Option Notice in accordance with clause 3 by the Option Period Date;
- 7.1.5 an Insolvency Event occurs in respect of the Transmission Company.
- 7.2 If this Agreement is terminated under this clause 7 (or this clause 7.2 is applied by clauses 3.5 or 8.1) then:
 - 7.2.1 this Agreement shall cease to have effect but without prejudice to:
 - (a) the rights and remedies in respect of any antecedent breach by either party to this Agreement; and
 - (b) clauses 2.7, 0 and this clause 7.2 which shall remain in full force and effect.
 - 7.2.2 the Transmission Company shall at its own expense promptly cancel any entry which it may have made with the Keeper in respect of this Agreement and produce evidence of cancellation to the Landlords; and
 - 7.2.3 if so required by the Landlords at any time the Transmission Company (if possible) shall use reasonable endeavours (subject to reimbursement of its reasonable costs of so doing) to procure that any Necessary Consent for the installation of the Supply Cables and associated works and their operation and use (which does not automatically enure for the benefit of the land) is transferred (in so far as it is transferable) to or reissued or amended so as to be in favour of any person to whom a lease or Option Agreement is granted by the Landlords of the Substation Sites and the Cable Corridor(s).
- 7.3 Notwithstanding the foregoing clauses, for the avoidance of doubt, on no account and in no circumstances shall the Option Period Date extend beyond the 10th anniversary of the date of this Agreement except insofar as such an extension has been approved by the Landlords.

8 Dealings affecting the Option Site

- 8.1 Prior to an Option Notice being served the Landlords may at any time and from time to time terminate this Agreement in respect of the Option Site and/or any part or parts of it by giving prior written notice to the Transmission Company specifying the whole or part or parts of the Option Site in respect of which the notice is given provided that:
 - 8.1.1 the Landlords shall not give notice under this clause 8.1 unless the Secretary of State has requested the Landlords to terminate this Agreement in respect of the Option Site or the part or parts of them specified in the notice because the Option Site or the part or parts of them specified in the notice are required for Oil and Gas Works or rights are required over the Option Site or the part or parts of them specified in the notice for Oil and Gas Works; and
 - 8.1.2 if notice is given under this clause 8.1, clause 7.2 (other than clause 7.2.3) shall apply in respect of the Option Site or part or parts of them specified in the notice but without prejudice

to the continuing operation of this Agreement in respect of the remainder of the Option Site (if any).

- 8.2 The Landlords are entitled in their absolute discretion prior to the grant of the Lease to carry out and grant leases licences and consents for the dredging or removal of materials and the construction of works for any purpose within the area for the Option Site, provided that:
 - 8.2.1 before granting any such lease licence or consent for the carrying out or construction of works the Landlords shall notify the Transmission Company;
 - 8.2.2 following the grant of any such lease licence or consent for the carrying out or construction of works the Landlords shall notify the Transmission Company of that grant and the lease licence or consent shall be deemed to be added to Schedule Part 1 and the Lease shall be granted subject to it (but the Landlords shall reserve the right in such lease licence or consent to grant the rights under Schedule Part 1 of the Lease);
 - 8.2.3 any such lease licence or consent relating to dredging or removal of materials is terminated by the Commencement Date of the Lease insofar as it relates to the Cable Corridor; and
 - 8.2.4 the Landlords' covenants under clause 4 of the Lease shall apply from the Commencement Date under any Lease.
- 8.3 Schedule Part 1 contains details of all leases licences or consents for works on in over or under the Option Site granted by the Landlords and details of which are contained on the Crown Estate Geographical Information System but no representation or warranty is made or given by the Landlords as to the accuracy of any information given by the Landlords as to the as laid position of works referred to in Schedule Part 1 or as to whether there are any leases licences or consents granted which are not contained on that system.

9 Alienation

- 9.1 The Transmission Company shall not assign or in any way deal or part with this Agreement or any interest under it except as provided in clause 9.2 and 9.5.
- 9.2 The Transmission Company may assign the whole benefit (but not part of the benefit) of this Agreement with the Landlords' prior written consent which may not be unreasonably withheld or delayed provided that:
 - 9.2.1 the Landlords shall not be regarded as unreasonably withholding their consent if they withhold it on the ground of any of the circumstances set out in clause 9.3;
 - 9.2.2 the Landlords shall not be regarded as giving their consent subject to unreasonable conditions if they give their consent subject to any of the conditions set out in clause 9.4; and
 - 9.2.3 the provisos in clauses 9.2.1 and 9.2.2 shall operate without prejudice to the entitlement of the Landlords to withhold their consent on any other ground or grounds where such withholding of consent would not be unreasonable or to impose any further or subsequent condition or conditions upon the grant of consent where the imposition of such condition or conditions would not be unreasonable.
- 9.3 The circumstances referred to in clause 9.2.1 are:
 - 9.3.1 where in the reasonable opinion of the Landlords the proposed assignee is not of sufficient financial standing to enable it to comply with the Transmission Company's obligations under this Agreement; and
 - 9.3.2 the proposed assignee is not resident in the United Kingdom or in a jurisdiction where reciprocal enforcement of judgements exists.

- 9.4 The conditions referred to in clause 9.2.2 are:
- 9.4.1 prior to the assignment the Transmission Company pays all arrears of sums due and payable under this Agreement;
- 9.4.2 where the proposed assignee is not incorporated in the United Kingdom the proposed assignee procures a legal opinion letter from a firm of solicitors in the relevant jurisdiction addressed to and approved by the Landlords (acting reasonably) and provides to the Landlords an irrevocable address for service in the United Kingdom for notices under this Agreement and the Lease and proceedings with solicitors or other agents approved by the Landlords (acting reasonably);
- 9.4.3 that any Necessary Consents for the installation and operation of the Supply Cables and associated works which have been granted are transferred or granted to the proposed assignee on or before completion of the proposed assignment;
- 9.4.4 prior to the assignment the Transmission Company and the proposed assignee take such steps and agree to make such variations to clause 9 of the Lease as, in the reasonable opinion of the Landlords, are necessary to ensure that the agreement to be contained in clause 9.1 of the Lease will be valid notwithstanding the Assignment; and
- 9.4.5 In circumstances where the proposed assignee is not an OFTO, the Windfarm Option Agreement is assigned contemporaneously with this Agreement and to the same proposed assignee as it is proposed will take an assignment of this Agreement.
- 9.5 The Transmission Company may assign this Agreement or any interest under it to an OFTO or OFTOs with the prior written consent of the Landlords (not to be unreasonably withheld or delayed) provided that immediately following such dealing written notice of the dealing is provided to the Landlords.
- 9.6 Notwithstanding the above, but subject to the prior written approval of the Landlords (which shall not be unreasonably withheld or delayed) the Transmission Company may assign the benefit of this Agreement by way of charge or security for the purposes of raising and/or securing finance for this Agreement the Lease and the Option Site provided that the Landlords shall be reasonable, if in their reasonable opinion, any chargee or security holder is not of sufficient financial or reputational strength.
- 9.7 Direct Agreement
- 9.7 The Landlords acknowledge that the Transmission Company may require funding from a bank or other financial institutions ("Funders") to construct and/or operate the Supply Cables and in arranging such finance the Funders may require as a condition of the availability of that finance to enter into a direct agreement with the Landlords to cover (without limitation) the following principal matters:
- 9.7.1 an acknowledgement by the Landlords of any security taken by the Funders over the Transmission Company and its assets (including over the Lease);
- 9.7.2 an obligation to give notice to the Funders in the terms of clause 5.4 of the Lease; and
- 9.7.3 an obligation on the Landlords not to take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Transmission Company without first giving a prescribed period of notice to the Funders;
- 9.7.4 a step in right (without giving rise to any express or implied assignment) to allow the Funders to ensure that the obligations of the Transmission Company are complied with so as to prevent any circumstances arising under which the Landlords could seek to determine the Lease; and
- 9.7.5 provisions regulating the application of insurance proceeds in the event that all or a part of the Specified Works is destroyed or damaged which provisions will permit the Funders to

recalculate financial ratios and conduct other economic tests (in respect of which the Funders shall take account of the Landlords' reasonable representations) relating to the fundamental financial viability of the Supply Cables and fundamental ability of the Transmission Company to meet debt service after the occurrence of a major insurable event and will further provide that if the specified economic tests are not satisfied, then any insurance proceeds received in respect of such insurable event shall be applied in repayment of amounts owing under any funding agreements rather than reinstatement of the relevant part or parts of the Specified Works.

- 9.8 The Landlords further acknowledge that they will act in good faith (at the cost and expense of the Transmission Company) to negotiate such a direct agreement where reasonably requested by the Transmission Company.

10 Miscellaneous

- 10.1 This Agreement is not to operate or be deemed to operate as a lease of the Option Site or the Rights.
- 10.2 Provided that so long as the Option Site forms part of Scottish Crown Estate Property any notice must be in writing and will be properly given if sent by recorded delivery or registered post (1) in the case of the notice by the Transmission Company to the Landlords addressed to them at Quartermile Two, 2nd Floor, 2 Lister Square Edinburgh EH3 9GL (or at such other address as the Landlords may from time to time intimate in writing to the Transmission Company) and (2) in the case of a notice by the Landlords to the Transmission Company if addressed to the Transmission Company at its registered office.
- 10.3 The Transmission Company shall subject to receipt of a valid VAT invoice pay to the Landlords VAT at the appropriate rate on all payments due to the Landlords under this Agreement.
- 10.4 This Agreement incorporates the entire contract between the parties and the Transmission Company acknowledges that it has not entered into this Agreement in reliance on any statement or representations made to the Transmission Company by or on behalf of the Landlords.
- 10.5 Any instalment of any sum due from the Transmission Company to the Landlords under this Agreement which is not paid when it is due (or within any period specifically allowed by this Agreement) shall bear interest at the rate set out in clause 3.2.3 of the form of Windfarm Lease for the period from (but not including) the date when it fell due to the date of payment.
- 10.6 Within 30 days of the date of this Agreement the Transmission Company shall pay to the Landlords the legal fees incurred by the Landlords including VAT in the preparation of this Agreement and on the date of completion of the grant of any Lease the Transmission Company shall pay to the Landlords the reasonable legal fees (including VAT) incurred by the Landlords in connection with the completion of the grant of the Lease.
- 11.7 It is not intended that any third party shall be entitled to enforce any term of this Agreement pursuant to the Contract (Third Party Rights) Scotland Act 2017.

11 Proper Law

- 11.1 This Agreement shall be governed by and construed in accordance with the Laws of Scotland and the Option Site is to be regarded as if they were incorporated in the body of a county of Scotland.
- 11.2 The Transmission Company irrevocably agrees for the exclusive benefit of the Landlords that the Courts of Scotland shall have jurisdiction over any claim or matter arising under or in connection with this Agreement and that accordingly any proceedings in respect of any such claim or matter may be brought in such courts. Nothing in this clause shall limit the right of the Landlords to take proceedings against the Transmission Company in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings

in any other jurisdiction or jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction or jurisdictions.

12 Supersession

The Landlords' and the Transmission Company's obligations under this Agreement shall continue, notwithstanding the grant of the Lease insofar as they remain to be carried out.

13 Confidentiality

13.1 Confidential Information

For purposes of this Agreement, the term **Confidential Information** of the Transmission Company shall mean and collectively include:

- 13.1.1 this Agreement and its terms and conditions;
- 13.1.2 all commercial and financial information of the Transmission Company, its affiliates, their officers, directors and shareholders disclosed under this Agreement;
- 13.1.3 all technical information and other proprietary information of the Transmission Company disclosed under this Agreement; and
- 13.1.4 all commercial, financial and technical information.

Confidential Information includes, without limitation, graphic information, maps, drawings, magnetic media and other information or data in any form whatsoever.

13.2 Undertakings with respect to Confidential Information

- 13.2.1 The Landlords and the Transmission Company undertake:
 - (a) to use Confidential Information only for the purposes of this Agreement;
 - (b) to preserve the secrecy of any Confidential Information; and
 - (c) not to disclose to any third party any Confidential Information or the existence or the terms and conditions of this Agreement without the agreement of the Transmission Company
- 13.3 Without prejudice to the provisions of this Clause 14 (*Confidentiality*), the Landlords shall upon any reasonable request by the Transmission Company, provide the Transmission Company with a copy of its current internal confidentiality policy.

13.4 Exceptions

- 13.4.1 The obligations of confidentiality contained in this Clause 14 (*Confidentiality*) shall not apply to Confidential Information if and to the extent that the same:
 - (a) is or becomes part of public knowledge or literature, without breach of this Clause 14 (*Confidentiality*);
 - (b) is disclosed to the Landlords without restriction as to use or disclosure by a third party (other than one disclosing on behalf of the Transmission Company or its affiliates) who could lawfully do so and who did not derive any such Confidential Information from the Transmission Company or its affiliates; or
 - (c) is independently developed by the Landlords without reference to the Confidential Information.

13.4.2 Notwithstanding anything contained in this Clause 14 (*Confidentiality*) to the contrary, the Landlords may disclose Confidential Information to the extent that:

- (a) such information has been required to be disclosed under Applicable Law, judicial proceedings, by a valid governmental order, decree, regulation or rule, or rule of any recognised stock exchange affecting the Landlord or its affiliates and after notification to the Transmission Company; or
- (b) such information is required to be disclosed in order to comply with the Freedom of Information (Scotland) Act 2002 (**FOISA**)

provided that paragraph (b) above shall not permit disclosure of Confidential Information otherwise prohibited under Clause 14 where the information is exempt from disclosure under Section 36 of the FOISA.

13.4.3 Notwithstanding anything in clause 14 to the contrary, the Transmission Company may disclose Confidential Information to OFTOs, potential OFTOs, and any lender or any other financial institution providing, or looking to provide, funding in relation to the Development, and their respective technical, legal, financial insurance and other professional advisors.

14 Indexation

14.1 Where in this Agreement an amount is stated to be increased by Indexation or is to be Indexed the amount shall be that amount annually, on each anniversary of the date of signing of this Option Agreement (save where provided otherwise), multiplied by $(CPI1 \div CPI2)$, where:

CPI1 is the higher of:

- (a) the value of the Index published in respect of the month two (2) months prior to the relevant calculation date; and
- (b) the highest value of the index published after the date of this Agreement; and

CPI2 is [Note: Base Index figure immediately prior to execution to be inserted on execution.]

14.2 If the reference base used to compile the Index changes after the date of this Agreement the figure taken to be shown in the Index after the change is to be the figure that would have been shown in the Index if the reference base current at the date of this Agreement had been retained.

14.3 If after the date of this Agreement:

14.3.1 the Index ceases to be published; or

14.3.2 it otherwise becomes impossible to operate the formula in clause 14.1 by reference to the Index

the Landlord and Tenant shall consult together with a view to agreeing an alternative index or method of adjusting the amounts stated to Indexed which as closely as possible gives effect to the purpose and intent of the parties as set out in this Agreement but in the event of any failure to agree or if any other dispute or difference arises between the Landlord and Tenant with respect to the calculation of the amounts stated to Indexed either party may require the matter to be determined by an arbitrator (to act as an arbitrator under the Arbitration Act 1996) to be appointed

either by agreement between the parties or, in the absence of agreement, by the President of the Royal Institution of Chartered Surveyors (or the next senior officer).

15 Consent to Registration

The parties hereto consent to registration hereof for preservation and execution IN WITNESS WHEREOF these presents consisting of this and the preceding pages together with the Schedule of 4 Parts annexed are executed as follows:

THEY ARE SUBSCRIBED for and on behalf of CROWN ESTATE SCOTLAND at on by:

Authorised Signatory

Full Name

before this witness

Witness

Full Name

Address

AND

THEY ARE SUBSCRIBED for and on behalf of the said []

at onby:

Director

Full Name

before this witness

Witness

Full Name

Address

.....
.....
.....
.....
.....

This is the Schedule referred to in the foregoing Option Agreement by **CROWN ESTATE SCOTLAND** to [] for a wind farm project on the bed of sea known as [])

Schedule Part 1

Part A

The following are licences and leases granted by the Landlords where the Landlords have given undertakings/covenants to obtain the consent of the licensees/tenants specified below (which consents must be obtained by the Transmission Company under this Agreement) before commencement of the Works in the vicinity of the works specified below:

Date	Licensee/Tenant	Works

Part B

The following are works which are not authorised by the Landlords to the extent that they lie outside the territorial waters of the United Kingdom but of which the Landlords are aware and in respect of which consent from the owners and/or operators of such works may need to be obtained:

Date	Licensee/Tenant	Works

Part C

The following are licences and leases granted by the Landlords where no consent shall be obtained of the licensees/tenants specified below before the grant of the Lease in the vicinity of the works specified below:

Date	Licensee/Tenant	Works

Schedule Part 2
Lease

Schedule Part 3
Plan (showing Option Site)

Schedule Part 4
Co-ordinates